

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	No. 12-0294 BN
)	
CHRISTINA BOWMAN,)	
)	
Respondent.)	

DECISION

Christina Bowman is not subject to discipline.

Procedure

On February 23, 2012, the State Board of Nursing (“the Board”) filed a complaint seeking to discipline Bowman. We served Bowman with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on February 25, 2012. Bowman did not file an answer. We held a hearing on November 9, 2012. Patricia Perkins appeared for the Board. Bowman appeared *pro se*. The matter became ready for our decision on April 5, 2013, the date the last written argument was filed.

Findings of Fact

1. Bowman is licensed by the Board as a licensed practical nurse (“LPN”) in the State of Missouri. Her Missouri nursing license is current and active and was so at all relevant times.

2. Bowman was employed as an LPN at the Moniteau Care Center (“MCC”) at all times relevant to this action.

3. Bowman was a “charge nurse” at MCC. In that capacity, she was “responsible for overseeing the care of the residents, administering medications, performing treatments, [and] assessing residents.”¹

4. Hydrocodone, the generic name for Vicodin,² was stored in a locked cabinet that nurses and other staff had access to.

5. Moniteau Care Center has a practice of allowing staff access to the drug carts.

The February 25, 2009, missing hydrocodone

6. On February 25, 2009, Angela Woods and Michelle Miller were both LPNs and charge nurses at MCC.

7. During a shift change on February 25, 2009, Woods and Miller reconciled the narcotic drugs. Bowman was not working and had been off work for over sixteen hours when Woods and Miller conducted that count.

8. Bowman reconciled the narcotic drugs when she left, and the count was correct. There were three other reconciliations of narcotic drugs before Woods and Miller did their reconciliation. All of these reconciliations showed no discrepancies in the narcotic drug amounts.

9. Bowman ordered hydrocodone for patient B.H.H. on February 24.

10. Woods and Miller discovered that a “stock card”³ of Vicodin, as well as the narcotic sheet⁴ that went with that card, were missing.

¹ Tr. 7.

² We will use hydrocodone and Vicodin interchangeably in this decision.

³ A “stock card” is a card “that the facility keeps on hand of narcotics in case a resident gets a new order for that drug or if for some reason they have ran out of it on their own medication card.” Tr. 8.

⁴ The “narcotic sheet” is attached to the stock card. When a dose of medication is administered, the practitioner must sign the narcotic sheet.

11. Miller called Bowman to ask if she had pulled that stock card. Bowman said that she pulled it for patient B.H.H.

12. Woods and Miller searched the medication carts and could not find the stock card or the narcotic sheet. The card and narcotic sheet were never found.

13. After that search, Miller called Bowman again. This time, Bowman said that she pulled the card for a different patient, S.D.

14. Woods and Miller again searched for the card and the narcotics sheet without success.

15. Mavis Cunningham, the care plan coordinator at MCC, and Cindy Martinson, the director of nursing at MCC, then spoke with Bowman on the telephone.

16. Bowman told Cunningham and Martinson that she had not pulled the card for either B.H.H. or S.D.

17. Woods then called Interlock Pharmacy. The pharmacy filled an order for stock Vicodin to be billed to B.H.H., as well as B.H.H.'s normal Vicodin prescription, on February 24, 2009.

18. No nurse signed that medication order.

19. MCC received six Vicodin tablets for stock and 15 Vicodin tablets designated for B.H.H. on February 25, 2009. Woods signed for those drugs.

20. Woods administered a drug screen to Bowman.

21. Bowman tested positive for opiates and benzodiazepines.

22. Hydrocodone is an opiate.

23. Bowman had been prescribed hydrocodone within the past year.

24. Bowman claimed that she had a prescription for Ambien, a benzodiazepine, but could not produce that prescription. She told Woods that her "dog had chewed up the bottle."⁵

⁵ Tr. 20.

Patient B.H.H.'s missing medications

25. Patient B.H.H. was to receive hydrocodone as needed for pain. He could receive hydrocodone as needed or once every six hours.

26. On February 21, 2009, Bowman administered hydrocodone to B.H.H. at 6:30 AM.

27. On February 21, 2009, Bowman administered hydrocodone to B.H.H. at 12:00 PM.

28. On February 21, 2009, Bowman administered hydrocodone to B.H.H. at 2:00 PM.

29. On February 21, 2009, Bowman administered hydrocodone to B.H.H. at 6:30 PM.

30. On February 21, 2009, Bowman administered hydrocodone to B.H.H. at 9:50 PM.

31. The prn⁶ administration record for B.H.H. for the month of February 2009 showed that B.H.H. received one dose of hydrocodone on February 10.

32. When a nurse administers a prn drug, they are to record it on the administration sheet with the date, time, and nurse's initials. The nurse is also supposed to, after a period of time, monitor the effectiveness of the medication and record the results on the administration sheet.

33. The nursing notes for patient B.H.H. contained no indication that B.H.H. was in pain on February 21, 2009, or that he needed pain medication.

34. Bowman's record of B.H.H.'s pain on February 21, 2009, was insufficient to justify the amount of hydrocodone she administered to him.

Conclusions of Law

We have jurisdiction to hear the complaint.⁷ The Board has the burden of proving that Bowman has committed an act for which the law allows discipline.⁸ The Board argues that there is cause for discipline under § 335.066.2:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621

⁶Prn means as needed.

⁷ Section 621.045. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

⁸ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo.App .E.D. 1989).

against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in Chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

(12) Violation of any professional trust or confidence;

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

Subsections (1) and (14) – Unlawful Drug Possession and Unlawful Drug Use

The Board argues that Bowman violated a drug law and unlawfully possessed controlled substances.⁹

Hydrocodone is a controlled substance.¹⁰ Bowman violated § 195.202.1 by possessing this substance: "Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance." In order to prove a violation

⁹ The Board also contends that Bowman unlawfully possessed Ambien, a benzodiazepine. The Board produced no evidence about what controlled substances Ambien contains. We therefore do not consider Bowman's Ambien under subsections (1) and (14).

¹⁰ Section 195.017.4(1)(a)(j).

of § 195.202, a person must have: “(1) conscious and intentional possession of the substance, either actual or constructive; and (2) awareness of the presence and nature of the substance.”¹¹

Bowman is not subject to discipline under § 335.066.2(1) because she did not unlawfully possess hydrocodone. The Board’s assertion that Bowman’s unlawful possession of this substance may be inferred from the fact that she tested positive for this substance is belied by Bowman’s then-current prescription for hydrocodone. Further, Bowman was not at MCC when the hydrocodone went missing. Bowman thus is not subject to discipline under § 335.066.2(1) or (14).

Subdivision (5) – Professional Standards and Honesty

Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession.¹² Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”¹³ Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.¹⁴ Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.¹⁵ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.¹⁶ Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹⁷

Based on the totality of the evidence presented, we find that Bowman did not take the hydrocodone from MCC and did not attempt to cover up the alleged theft by ordering additional

¹¹ *State v. Anderson*, 386 S.W.3d 186, 190 (Mo.App E.D. 2012).

¹² *Albanna v. State Bd. of Reg’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009).

¹³ *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo.App. E.D. 1988).

¹⁴ *Id.* at 533.

¹⁵ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹⁶ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹⁷ *Id.* at 794.

hydrocodone or by falsely claiming to administer hydrocodone to patient B.H.H. We do not find incompetence, fraud, dishonesty, or misrepresentation.

Bowman's conduct was unintentional, so we find no misconduct. Bowman's patient records for B.H.H. failed to show the necessity for administering hydrocodone to B.H.H. on February 21, but the Board presented no expert evidence about the standards applicable to LPNs, so we cannot find gross negligence.¹⁸

There is no cause for discipline under § 335.066.2(5).

Subdivision (12) – Professional Trust or Confidence

The Board argues that Bowman violated a professional trust or confidence. Professional trust is reliance on the special knowledge and skills that professional licensure evidences.¹⁹ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.²⁰ We find no cause for discipline under § 335.066.2(12).

Bowman's affirmative defense

Bowman contends that the Board cannot seek to discipline her license because she was acquitted on criminal charges relating to this incident. Bowman submitted a docket sheet from the Moniteau County Circuit Court showing that she was charged with one count of stealing a controlled substance under § 570.030. A jury found Bowman not guilty on that charge. Our review of the docket sheet shows that the date of the charged offense was February 24, 2009. The witnesses summoned were the same ones that testified in this action. Thus, we conclude that the charges in the Moniteau County Circuit Court dealt with Bowman stealing Vicodin—a portion of the conduct for which the Board seeks discipline.

¹⁸ *State Bd. of Reg'n for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 158 n. 16 (Mo. 2003); *Tendai v. Missouri State Bd. of Reg'n for the Healing Arts*, 161 S.W.3d 358, 367 (Mo. 2005), overruled on other grounds by *Albanna v. State Bd. of Reg'n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009); *Kerwin v. Missouri Dental Board*, 375 S.W.3d 219 (Mo.App. W.D.2012).

¹⁹ *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

²⁰ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo.App. E.D. 1989).

The criminal prosecution does not bar the Board from seeking to discipline Bowman's license. The Missouri Supreme Court has explicitly held in a lawyer discipline action that "a criminal acquittal does not bar subsequent disciplinary action."²¹ The Missouri Supreme Court reached that same conclusion in a case involving the license of a doctor.²² Bowman's acquittal would not necessarily preclude the Board from disciplining her license.

Summary

Bowman is not subject to discipline.

SO ORDERED on July 25, 2013.

\s\ Nimrod T. Chapel, Jr.
NIMROD T. CHAPEL, JR.
Commissioner

²¹ *In re Storment*, 873 S.W.2d 227, 229-230 (Mo. banc 1994).

²² *Younge v. State Bd. of Regis'n for the Healing Arts*, 451 S.W.2d 346, 350 (Mo. 1969).